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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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In the Matter of )

Closed Captioning and Video Description )  
of Video Programming )  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

MM Docket No. 95-176

To: The Commission:

COMMENTS OF THE ASSOCIATION OF  
AMERICA'S PUBLIC TELEVISION STATIONS AND  
THE PUBLIC BROADCASTING SERVICE

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## Summary

Public Television has been in the forefront of developing captioning and technology services and is dedicated to its mission of equal access to its programming and services by all people. At the same time, financial constraints presently preclude many public television stations from captioning their locally produced programming. For this reason, Public Television supports the Commission's proposals for allowing a minimum eight year transition for captioning non-exempt programming, setting a sufficiently advanced time for captioning a reasonable percentage of library programming, and adopting certain exemptions to captioning based on economic burdens for public television stations.

Specifically, Public Television supports exemptions for fundraising and locally produced instructional material. Additionally, Public Television requests that the Commission grant exemptions to two additional classes of locally produced public television programming: locally produced programming of small noncommercial stations, and programming produced by noncommercial stations and distributed without charge in a sharing program with other stations.

The very limited exemptions requested for public television stations balance the important goal of captioning programming with the economic realities of noncommercial station funding and operation.

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The Association of America's Public Television Stations and the Public Broadcasting Service ("collectively Public Television") submit these comments in response to the Commission's Notice of Proposed Rulemaking in MM Docket No. 95-176 ("Notice"). The Notice requests public comment on proposed rules to implement the closed captioning requirements set forth in Section 713 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"). The proposed rules are based on information gathered by the Commission pursuant to a Notice of Inquiry, on which Public Television filed comments, and a subsequent Report on the Commission's findings in this inquiry.<sup>1</sup>

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<sup>1</sup> Notice of Inquiry, MM Docket No. 95-176, FCC 95-484, 11 FCC Rcd 4912 (1996); Report, MM Docket No. 95-176, FCC 96-318 (released July 29, 1996), summarized at 61 Fed. Reg. 42249 (August 14, 1996). The APTS Comments and PBS Comments on the Notice of Inquiry were filed on March 15, 1996.

## Introduction

APTS and PBS are nonprofit organizations whose membership includes virtually all of the nation's 179 public television licensees. APTS engages in planning and research activities on behalf of its members, as well as representing them in legislative and policy matters before the Commission, Congress, and the Executive Branch. PBS provides program distribution and other services to the stations and is a leader in the development of new and improved television technologies.

The Public Television comments address the Commission's proposed captioning rules and exemptions contained in the Notice. The Commission proposes an eight year transition path to captioning all non-exempt programming, with increases of 25 percent of programming required to be captioned every two years. As an alternative, the Commission proposes a ten year phase-in transition. The Commission also requests comment on whether 75 percent of all "library" programming should be captioned by a date certain in order to "maximize the accessibility" of previously published programming, as mandated by the Act. Additionally, the Commission requests comment on proposed exemptions of classes of programming under the "economic burden" criterion and exemptions on a case-by-case basis under the "undue burden" criteria set forth in the Act.

Public Television supports the minimum eight year transition period for captioning current programming, as well as ensuring an adequate time period before requiring captioning of a reasonable amount of library programming. Further, Public Television supports the exemption of certain classes of programming under the economic burden standard.

## I. Public Television's Commitment To Accessible Programming

Public television's mission is to provide educational, informational and cultural programming and related services to the unserved and underserved of our nation. The Public Broadcasting Act of 1967 reflected Congress's desire to "support a national policy that will most effectively make public telecommunications services available to all citizens of the United States."<sup>2</sup> Public broadcasting stations are committed to making their programming accessible to all audiences.

In its desire to reach viewers traditionally excluded from broadcast programming, public television has taken a leadership role in making its programming accessible to deaf, hard-of-hearing, blind, and visually impaired persons. As recognized by the FCC in its Report issued on the findings from its inquiry, "PBS has been at the forefront in the development of captioning technology and services" (§ 60). The National Center for Accessible Media, established with funding from CPB at WGBH in Boston, has served as a resource to public broadcasting in developing accessibility. The Caption Center at WGBH was established in 1971 as the world's first captioning center.<sup>3</sup> For approximately nine years thereafter, until 1980, only public broadcasting stations carried captioning.<sup>4</sup>

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<sup>2</sup> 47 U.S.C. §396(a)(7).

<sup>3</sup> Additionally, PBS was instrumental in establishing the National Captioning Institute in Virginia.

<sup>4</sup> Similarly, descriptive video service ("DVS") was developed by public broadcasting through WGBH. In 1988, PBS tested DVS nationally throughout its season of *American Playhouse*, and in 1990, PBS aired the first nationally described program *American Playhouse's* "Sense and Sensibility." In 1990, public television was honored by the National Academy of Television Arts and Sciences with an award for its development of descriptive video services.

Public television stations continue to be leaders in offering closed captioning, which furthers their goal of providing all persons equal access to public television programming. This fact was recognized by Chairman Hundt in describing what he called "the history of the partnership among the FCC and PBS and WGBH in making television accessible to people who are deaf and hard of hearing."<sup>5</sup> As noted in the FCC's Notice, nearly 100 percent of the PBS national programming service carried on public television stations is closed captioned (§12).<sup>6</sup> In general, the few PBS programs in the national programming service that are not closed captioned are visually oriented (such as dance performances), non-verbal in nature (such as music concerts), or in foreign languages.<sup>7</sup>

Recently, APTS conducted a survey of its member stations to gather information on the current amounts of captioned programming carried by the stations, costs of captioning, and other related issues. The survey showed that, on average, 60 percent of over-the-air programming broadcast by the stations is the PBS national programming service, of which nearly 100 percent is captioned. On average, 15 percent of all other programming carried by the

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<sup>5</sup> Speech by Chairman Reed Hundt, "Access to the New Frontier," delivered to the CPB/WGBH National Center for Accessible Media, New York, New York, December 4, 1995, at 2 ("Access to the New Frontier").

<sup>6</sup> Similarly, PBS programming is still the only broadcast service providing DVS free to its viewers. Over 130 public television station licensees currently carry DVS services provided by PBS, reaching more than 71 percent of the United States population, and other public television stations are in the process of upgrading their equipment to be capable of carrying descriptions.

<sup>7</sup> In addition to the National Program Service, PBS offers several other program services. "Schedule X" is offered by direct broadcast satellite services to households not served by a local public television station. Schedule X consists primarily of the PBS National Program Service, of which virtually all is captioned. Additionally, PBS offers PBS Select and PBS Plus to its member public television stations, designed to enhance optional programming purchases for these stations. In the upcoming month of April, PBS will distribute 349 hours of programming, of which 285 hours are part of the National Program Service, three hours (not captioned) are part of PBS Select, and 61 hours (37 not captioned) are part of PBS Plus.

stations, including programming from other national/regional sources and locally produced programming, is closed captioned. In summary, on average, 75 percent of all public television programming is currently captioned.

## II. Financial Impediments to Providing Accessibility

Although public television stations have an unwavering commitment to making their programming accessible to all audiences, lack of financial resources is often a barrier to realizing the commitment. Not all public television stations are able to caption their locally produced programming because of the costs associated with closed captioning. This is not surprising given the limited operating budgets of public television stations.

Approximately one-third of all public television stations operate with budgets of under \$3,000,000. Indeed, the entire public television industry - including the costs of programming, educational services, salaries and facilities - operates on approximately six percent of the revenues available to the commercial broadcast television industry.

As recognized in the FCC's Report and Notice, there are significant costs involved in closed captioning programming. Captioning in-house includes the up-front costs of equipment and staff training, and ongoing costs in allocating staff time, purchasing videotape, and upgrading equipment. Similarly, the costs of using an outside captioning center can be very high (Notice, ¶18-22).

These costs are not insignificant, especially in light of the meager operating budgets of many stations that are dependent upon federal and state funding and voluntary contributions from viewers and corporate underwriters. Not surprising, the APTS captioning survey indicated that the main hurdle in providing closed captioning is funding. While several stations



have invested in training their staff persons, they have been unable to secure funding to cover the costs of purchasing captioning equipment. Stations that were fortunate to receive one-time grants to cover the equipment, now are finding they cannot secure the funding to upgrade the equipment or to cover the rising costs of a staff person dedicated to captioning.

Public television stations that are currently captioning local productions typically rely on federal and/or state funding to cover as much as 100 percent of their captioning costs. Public television's federal appropriations are subject to continued scrutiny as Congress attempts to balance the federal budget, and many public television stations, dependent upon state funding, have experienced cutbacks in state appropriations. Further, the Public Telecommunications Financing Program ("PTFP"), which has funded a large percentage of the costs of public broadcasting's existing captioning facilities, currently is not included in the Administration's FY 1998 budget request. Additionally, the Administration's FY 1998 budget request includes no money for captioning new programming.<sup>8</sup>

Many public television stations now facing the challenge of simply supporting current operations, will find it difficult, if not impossible, to realize their goal of making local productions accessible through closed captioning. Therefore, the Commission should give substantial consideration to public broadcasters when developing exemptions to the closed captioning rules.

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<sup>8</sup> The Administration's FY 1998 budget does not include any new grants budgeted for closed captioning from the Department of Education. According to the Notice, DOE currently funds approximately 40 percent of existing captioning (Notice, ¶ 10). Presumably, once the existing funding grants end, DOE will no longer be a source of funding for closed captioning.

### III. Public Television's Support of the Proposed Transition Periods and Proposed Exemptions

As discussed above, although public television is committed to providing accessibility to the greatest extent possible, financial constraints presently preclude many public television stations from captioning their locally produced programming. For this reason, Public Television supports the Commission's proposals for allowing a minimum eight year transition for captioning non-exempt programming, setting a sufficiently advanced time for captioning a reasonable percentage of library programming, and adopting certain exemptions to captioning based on economic burdens as related to public television stations.

#### A. Proposed Transition Periods for Captioning Current and Library Programming

Public Television supports the Commission's proposal for a minimum eight year transition period with a phased-in approach to requiring captioning of current programming. Public Television also supports the alternative proposal of a ten year phase-in period. A transition period is necessary for public broadcasting stations to comply with closed captioning requirements.

As discussed above, on an average, 75 percent of programming currently broadcast by public television stations is captioned. The remaining 25 percent of programming includes locally produced programming and programming from other, non-PBS production sources. Because of their unique funding structures, most public television stations will require sufficient lead time to raise or reallocate funds to cover the cost of captioning the locally produced programming. Producers of the remaining noncommercial programming are generally smaller enterprises than their

commercial and their PBS counterparts. These production entities will likely need several years lead time to budget to achieve 100 percent captioned programming. Moreover, as captioning technology improves over the eight or ten year transition period, the costs of captioning logically will decrease. Therefore, Public Television supports a minimum eight year, and prefers a ten year, transition period for 100 percent captioned programming.

Although the Notice does not set a time period for achieving captioning of library programming, the Commission does suggest a reasonable transition period to a date certain to caption a reasonable amount of library material, perhaps 75 percent in total. Public Television supports setting reasonable amount and time requirements on library material. Specifically, Public Television would support a requirement that 75 percent of any remaining library materials still in use after the initial eight or ten year transition period be captioned within a subsequent eight year phase-in period. The initial phase-in period would allow stations to build libraries of captioned materials, and the subsequent phase-in period would permit stations time and resources to identify and caption library materials that will have recurrent use.

**B. Proposed Exemptions Based on Economic and Undue Burdens**

As the Commission discusses in its Notice (§6), the Telecommunications Act of 1996 allows the FCC to exempt certain classes of programming or services if the captioning requirement would be “economically burdensome” and may grant exemptions to petitioning individual video providers and owners on the grounds that captioning would be an “undue burden.”<sup>9</sup> An undue economic burden is defined as a

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<sup>9</sup> *Id.* at Section 713 (d).

“significant difficulty or expense,” and the factors that Congress directed the Commission to analyze in coming to such a determination include: the nature and cost of the closed captions, the impact on the operation of the provider or program owner, the financial resources of the provider or program owner, and the type of operations of the provider or program owner.<sup>10</sup>

Public Television supports the Commission’s proposed exemptions based on “economic burden” that relate to public broadcasting.<sup>11</sup> In particular, Public Television supports the exemptions for locally produced and distributed instructional programming, and fundraising activities of noncommercial broadcasters (Notice, ¶72-84).

#### 1. Fundraising Activities

The Commission notes in its Notice that “the economic burden of captioning live fundraising activities might outweigh the benefits of captioning such programming” (Notice, ¶81). Captioning of pledge drives and other fundraising efforts indeed would be very burdensome for public television stations. Fundraising material is live, unscripted, and, therefore, difficult and expensive to caption. On balance, there seems to be little corresponding benefit in terms of the educational or entertainment value of pledge drives to the deaf and hard-of-hearing community.<sup>12</sup> Therefore,

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<sup>10</sup> *Id.* at Section 713 (e).

<sup>11</sup> Public Television also supports the exemptions proposed by the Commission for music, dance, and other programs set forth in the Notice, for which the economic burdens of captioning outweigh the limited benefits. A number of the proposed exemptions, such as the exemption for advertising, do not apply to public television stations.

<sup>12</sup> Additionally, alternatives to closed captioning of fundraising are available, such as employing on-screen messages and TTY phone lines.

Public Television supports the exemption for on-air fundraising activities, as proposed by the Commission.<sup>13</sup>

## 2. Instructional Programming

Public Television supports the Commission's proposal to exempt locally produced and distributed instructional programming. A large percentage of the educational, instructional materials broadcast by public television stations are currently captioned. Nearly 100 percent of the PBS Ready-to-Learn and other K-12 instructional programming is captioned. Approximately two-thirds of the PBS Adult Learning Service programming is captioned, and the rest of the ALS is expected to be captioned pursuant to a grant within the next year or two. Public Television's concern is with instructional programming, locally produced for in-class course credit.<sup>14</sup> Production of such programming is typically done with very small production budgets. The APTS survey indicates that public stations would not be able to continue these productions if captioning were required. Therefore, Public Television supports the exemption for locally produced station instructional programming.<sup>15</sup>

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<sup>13</sup> Although the Notice does not specifically discuss underwriting credits, program promotional material, or other similar programming, APTS assumes that such programming would be included within the exempted programming.

<sup>14</sup> Such programming may be produced by a public television station university or college licensee or by a consortia of public television educational licensees for use on a local or regional basis.

<sup>15</sup> This exemption should also apply to instructional programming distributed by public television stations over their ITFS facilities.

3. Additional Exemptions for Local Productions of Small Stations and Program Exchange Service

In addition to the two local production exemptions for fundraising and instructional material discussed above, Public Television requests that the Commission grant exemptions to two additional classes of locally produced public television programming. Public Television proposes an exemption for the locally produced programming of small noncommercial stations, and an exemption for the programming produced by noncommercial stations and distributed without charge in a sharing program with other stations.

(a) Local Productions of Small Noncommercial Stations

Approximately one-third of all public television stations operate with budgets under \$3,000,000.<sup>16</sup> The local programming produced by these stations generally is done with very little resources on "shoe string" budgets. A good deal of this programming is live, unscripted material, such as "talking heads" news interview shows. These stations' responses to the APTS survey show that, if required to caption these programs, these small stations will no longer be able to produce local programs. The costs of captioning would greatly increase the allocated production budgets, to the extent of prohibiting the production of the programming. Therefore, Public Television requests an "economically burdensome" exemption for the local programming of these stations.<sup>17</sup>

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<sup>16</sup> The \$3,000,000 benchmark is generally accepted among noncommercial stations as indicative of a small station. For example, virtually all of the members of the public television Small Station Association have operating budgets below \$3,000,000.

<sup>17</sup> The APTS survey showed that many public television stations with operating budgets above \$3,000,000 are also very concerned about their financial inability to caption locally

(b) Local Productions in the Program Exchange Service

Similarly, many public television stations participate in a Program Exchange Service. Stations produce local shows and offer them to the exchange for distribution without charge. These shows have no underwriters or sponsors, and are produced with minimal budgets. The only proceeds that are derived for the stations from these programs are from possible sales of ancillary products. For example, a public television station may produce a local cooking show and offer it to the exchange without charge. The costs of production are met only from the possible sales of recipe cards or cooking books related to the show. Again, responses to the APTS survey uniformly indicate that stations who produce this exchange programming will cease such productions, due to financial inability to comply, if captioning is required.

In sum, Public Television supports limited exemptions to the Commission's captioning rules for fundraising efforts, locally produced instructional programming, programming offered without charge in all the Program Exchange Services, and all local programming of small noncommercial stations.

If the Commission chooses not to create exemptions for the latter two classes of programming based upon the "economic burden" standard, Public Television requests that the Commission create a presumption in favor of exempting this programming when developing criteria for the case-by-case applications of the "undue burden" standard. The public interest would not

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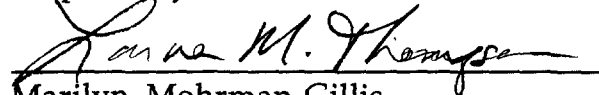
produced programs. Public Television requests that the Commission create a presumption in favor of these nonprofit stations in developing its criteria under the case-by-case "undue burden" standards.

be served if local programming were reduced or eliminated due to the stations' financial inability to caption it.

### Conclusion

Public Television continues to be dedicated to its mission of equal access to its programming and services by all people. However, financial constraints often impede Public Television stations' ability to provide closed captioning in their locally produced programs. Public Television, therefore, requests that the Commission balance the needs for captioning against the economic realities of public television funding, and establish the very limited exemptions discussed in these comments for Public Television stations.

Respectfully submitted,



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